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FILED  
DISTRICT COURT OF GUAM  
DEC 13 2004  
MARY L. M. MORAN  
CLERK OF COURT

**IN THE DISTRICT COURT OF GUAM  
HAGÁTÑA, GUAM**

JULIE BABAUTA SANTOS, individually  
and on behalf of all those similarly situated,

Petitioner,

vs.

FELIX P. CAMACHO, Governor of Guam;  
ART ILAGAN, Director of Department of  
Revenue and Taxation; LOURDES M.  
PEREZ, Director of Department of  
Administration; DOUGLAS B. MOYLAN,  
Attorney General of Guam; and  
GOVERNMENT OF GUAM,

Respondents.

Civil Case No. 04-00006

**MOTION FOR CONTINUANCE  
OF DECEMBER 17, 2004 HEARING,  
AND  
MEMORANDUM IN SUPPORT**

The Attorney General of Guam, respectfully moves the Court to continue the hearing currently set for December 17, 2004 in the above-styled matter for a minimum of 30 to 45 days, and in support says as follows:

**MOTION AND APPLICATION FOR CONTINUANCE**

By Order dated November, 12, 2004, this matter was previously scheduled for a hearing on "Petitioner's Motion for Orders Approving the Administration Plan and Amended Notice and for

1 Orders Establishing the Fairness Hearing Date and Objection and Opt Out Date.” Ordinarily, such  
2 matters would be deemed almost “routine” and “administrative” in nature, and as such, not very  
3 controversial. Since the November 12, 2004 Order, however, the complexion of the case has  
4 changed considerably. Private attorneys have appeared, namely, Rodney J. Jacobs, Esq. and Daniel  
5 M. Benjamin, Esq. of the law firm of Calvo and Clark, LLP, as putative counsel for defendant  
6 Governor; and Rawlen Mantanona, Esq. putative counsel for defendants Artemio B. Ilagan and  
7 Lourdes M. Perez. As the Court is aware, the Governor has, through private counsel, filed extensive  
8 objections to the plan contradicting filings by the Attorney General which were to be heard. But the  
9 Attorney General, who respectfully contends he is sole counsel and representative of the named  
10 defendants, has moved to strike the appearances of private counsel and all subsequent documents  
11 filed by them on behalf of any named defendant, asserting *inter alia*, that the private counsel  
12 purportedly retained by the named defendants have appeared without legal authority to do so. A  
13 critical issue has thus arisen which must be resolved first, before any further proceeding, namely,  
14 the question of who is lawfully authorized to appear on behalf of the named defendants in this  
15 matter.  
16

17 On December 9, 2004, only eight days before the prior scheduled hearing, this Honorable  
18 Court issued an Order stating,

19 the Court believes that oral argument will assist the Court in  
20 reaching a decision [respecting the controversy as to who represents  
21 whom in this action]. Accordingly, the Court schedules said  
22 motions for hearing on December 17, 2004 *as well*. No further  
23 briefing on these motions is necessary, *however, all parties should*  
24 *be prepared to proceed with all necessary witnesses on the hearing*  
25 *date.*

1                   Finally, *because the Court expects the presentation of*  
2                   *argument to be lengthy*, the Court hereby moves the hearing from  
                  10:00 a.m. to 1:30 p.m.

3 (Emphasis added.) The Attorney General concurs with the Court, and believes opposing counsel  
4 would agree, that witnesses will be necessary to a complete appreciation of the facts and issues  
5 presented to the Court, and further concurs that a hearing and argument are likely to be lengthy  
6 given the significant and potentially dispositive legal issues presented. Specifically, serious factual  
7 disputes have arisen which will require the testimony of, at a minimum, Governor Felix P.  
8 Camacho, Lourdes M. Perez, and Artemio B. Ilagan, and possibly the Governor's counsel,  
9 Shannon Taitano. And the legal issues presented will likely define the future courses of this and  
10 other related litigation. These issues must be decided first.

11  
12           At present, only three attorneys in the Office of Attorney General are knowledgeable about  
13 the facts and legal issues pending before the Court and presently set for hearing on December 17,  
14 2004: Attorney General Douglas B. Moylan; Assistant Attorney General Stephen A. Cohen; and  
15 Assistant Attorney General Robert M. Weinberg. Through no fault of their own, Attorney General  
16 Douglas B. Moylan; Assistant Attorney General Stephen A. Cohen and Assistant Attorney General  
17 Robert M. Weinberg will not be available to appear before the Court on the scheduled date to  
18 address these critical *new* issues, which perforce must be heard before the Court hears the matter  
19 originally scheduled for December 17, 2004.

20  
21           Attorney General Moylan is presently a party to litigation in his personal capacity in a jury  
22 trial in the Superior Court of Guam. The trial is estimated to last a minimum of another two weeks,  
23 if not longer. The Superior Court judge is unlikely to excuse him or continue this jury trial which  
24 has been scheduled for some time in advance of the December 17, 2004 date set by this Court, and  
25 which has already been continued many times for various reasons. Unknown to this Court in issuing

1 its December 9, 2004 Order, Assistant Attorney General Cohen's father died following a protracted  
2 illness on December 4, 2004. Mr. Cohen is presently off-island attending to the affairs of his  
3 father's estate. He is not expected to return before December 20, 2004 at the earliest. And, unknown  
4 to this Court in issuing its December 9, 2004 Order, Assistant Attorney General Weinberg is  
5 expecting the birth of his first child on or about December 16, 2004, and expects to be on paternity  
6 leave for a minimum of five business or working days following the date of his child's birth. All of  
7 this has been communicated to opposing counsel. *See* "Declaration and L.R. 7.1(k) Certificate Of  
8 Robert M. Weinberg Pertaining To Ex Parte Application For Continuance," filed concurrently with  
9 this motion.  
10

11 While it is possible that an attorney may have been found to address the questions originally  
12 set to be heard, there are no other attorneys in the Office of the Attorney General qualified or  
13 available to argue the extremely serious *preliminary* matters that the Court has indicated it intends  
14 to address at the December 17, 2004 hearing.

15 Recognizing the seriousness of the preliminary question of representation that must be  
16 resolved, and cognizant and understanding of the personal hardships of their opposing counsel,  
17 Daniel M. Benjamin, Esq., putative counsel for defendant Governor; and Rawlen Mantonona, Esq.,  
18 putative counsel for defendants Artemio B. Ilagan and Lourdes M. Perez, have expressed their  
19 understanding and willingness to stipulate to continue the proceedings at least one month, in order  
20 to allow either Mr. Cohen or Mr. Weinberg, if not the Attorney General himself, to participate in the  
21 scheduled hearing. However, Mr. Michael Phillips, Esq., counsel for the plaintiff and putative  
22 plaintiff class, has declined to agree to continue the hearing. *See again*, "Declaration and L.R.  
23 7.1(k) Certificate Of Robert M. Weinberg Pertaining To Ex Parte Application For Continuance."  
24  
25

1 The Court can take judicial notice that there are two other EITC-related cases filed in this  
2 Court, *Charmaine R. Torres v. Government of Guam, Felix P. Camacho, et al*, Civil Case No. 04-  
3 00038; and the recently filed *Mary Grace Simpao and Christina M.S. Naputi*, Civil case No. 04-  
4 00049. The legal issues and factual contentions raised in these other two cases are very similar, if  
5 not identical in large degree, to the matter presently before the Court. What happens in one case  
6 will have ramifications in, if not be dispositive of, the other two. It appears that the principle  
7 distinction between the three are the definitions of the proposed classes in each case, but all three  
8 proposed classes appear to overlap in one or more ways. The relief sought by the three proposed  
9 class appears to overlap one another. The likelihood that some party may move, or the Court may  
10 *sua sponte* suggest to the parties, that consolidate of the three cases may be appropriate, and the  
11 possibility that some party may file an objection to the exercise of jurisdiction over all three by the  
12 Magistrate-Judge is very high. Considering the uncertainty of the cases at this juncture, and the  
13 critical preliminary question that must be answered as to who is legally authorized represent whom,  
14 the likelihood that a hearing on "Petitioner's Motion for Orders Approving the Administration  
15 Plan, [etc.]" will serve any purpose at all is extremely low.

#### 17 MEMORANDUM OF POINTS AND AUTHORITIES

18 Rule 6(b)1, F.R.Civ.P. provides in pertinent part:

19 When by these rules or by a notice given thereunder or by  
20 order of court an act is required or allowed to be done at or within a  
21 specified time, the court for cause shown may at any time in its  
22 discretion (1) with or without motion or notice order the period  
23 enlarged if request therefore is made before the expiration of the  
24 period originally prescribed or as extended by a previous order....

25 No party can legitimately dispute that the Attorney General has shown good cause for a  
continuance considering: (1) the three attorneys qualified to appear have unavoidable personal

1 commitments of a most serious nature; (2) the unavailability of any other attorney in the Office to  
2 adequately prepare and present argument to the Court on short notice; (3) the lack of objection by  
3 all but one attorney in this matter, namely, counsel for the plaintiffs; (4) the lack of prejudice to any  
4 opposing parties; (5) the agreed upon necessity for witness testimony at a hearing; (6) the  
5 likelihood of “lengthy” argument on the preliminary question of who represents whom, and  
6 accordingly, what defenses will be asserted and what defenses will not be, thus critically defining  
7 the nature of the remainder of the case and, significantly, whether there even remains a preliminary  
8 settlement for the parties to pursue; (7) the high probability someone will move that this case be  
9 consolidated with *Charmaine R. Torres v. Government of Guam, Felix P. Camacho, et al*, Civil  
10 Case No. 04-00038; and the recently filed *Mary Grace Simpao and Christina M.S. Naputi*, Civil  
11 case No. 04-00049; (8) the possibility that someone may object to the current exercise of  
12 jurisdiction by the Magistrate-Judge; and (9) that in light of all the above, what was originally  
13 scheduled and plaintiffs are insisting be heard, “Petitioner’s Motion for Orders Approving the  
14 Administration Plan, [etc.]” will likely serve no purpose at all.

16 Rule 83(a)(2), F.R.Civ.P. provides: “A local rule imposing a requirement of form shall not  
17 be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply  
18 with the requirement.” Clearly, any failure on the part of the attorneys in the Office of Attorney  
19 General to comply with the scheduling notice, and to be prepared to present testimony and  
20 argument on these extremely critical *preliminary* issues is “nonwillful,” and through no fault of  
21 their own. And, to the extent that the local rules and orders of this Court in the circumstances  
22 presented will cause the Office of the Attorney General substantial prejudice, and violate his duties  
23 as he understands them to be under the Organic Act, a continuance is due to be granted.  
24 Conversely, the plaintiffs will suffer no prejudice whatsoever by a mere delay of one month in  
25

1 order to resolve the preliminary question of who is lawfully authorized to represent their  
2 adversaries is in Court.


3 Rule 1, F.R.Civ.P. provides that the Rules of Civil Procedure "shall be construed and  
4 administered to secure the just, speedy, and inexpensive determination of every action." A 30 to 45  
5 day continuance for the parties to appear and present testimony and argument will serve the ends of  
6 justice and judicial economy far better than any rush to hold a hearing on a matter that, in and of  
7 itself, will likely have little or no consequence due to complexities of the issues that have recently  
8 been brought before this Court.

9  
10 This motion and application is based upon the files and records herein, and the declaration  
11 of Robert M. Weinberg filed contemporaneously herewith.

12 WHEREFORE, The Attorney General of Guam, respectfully moves the Court to continue  
13 the hearing currently set for December 17, 2004 in the above-styled matter for a minimum of 30 to  
14 45 days,

15 This 13<sup>th</sup> day of December, 2004.

16 OFFICE OF THE ATTORNEY GENERAL  
17 Douglas B. Moylan, Attorney General

18   
19 Robert M. Weinberg  
20 Assistant Attorney General  
21 Attorney for Respondents and  
22 Attorney General Douglas B. Moylan  
23  
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